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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,891	02/23/2004	Terenci G. DeMeo	02-1501	5977

7590 07/11/2005  
Elias C. Borges  
Suite 406  
1 Eva Road  
Toronto, ON M9C 4Z5  
CANADA

EXAMINER

REESE, DAVID C

ART UNIT PAPER NUMBER

3677

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/782,891	<b>Applicant(s)</b> DEMEO, TERENCE G.	
	<b>Examiner</b> David C. Reese	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on Amendment: 28 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15 and 16 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*HC*

### **DETAILED ACTION**

This office action is in response to Applicant's amendment filed 4/28/2005.

#### ***Status of Claims***

- [1] Claims 1-16 are pending.

#### ***Claim Rejections - 35 USC § 112***

[2] Claim 1 recites the limitation "the wings" in the instant claim. There is insufficient antecedent basis for this limitation in the claim. Consider changing to "wing portions."

[3] Claim 16 recites the limitation "the third member" in the instant claim and dependent one therefrom. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

[4] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United

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States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[5] Claims 1-6, 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Belser, U.S. Patent Re. 35,358, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Belser is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 1, Belser discloses a fastening bolt assembly comprising:

an elongated flexible tube having open opposite first and second ends (20a, 23a of 20 in Fig. 4, of which is stated as a tubular expansion insert.)

an elongated first member having a central portion (24 in Fig. 4) and opposite wing portions (26 in Fig. 4), extending perpendicularly from the central portion (26 against 24 in Fig. 1), the central portion mounted to the first end of the tube (23 in Fig. 4),

a cylindrical second member having an internal passage dimensioned to receive the tube (34 in Fig. 4), the second member mounted to the tube between the first and second ends of the tube (20 in 18 as shown in the central portion of Fig. 2), and

the tube (20) being sufficiently flexible to permit the tube to bend (going from the position in Fig. 1 to the that in Fig. 2) such that the wings may be moved between a first position

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wherein the wings are parallel (26' in Fig. 1) to the tube (20) and a second position (26 in Fig. 1) wherein the wings are perpendicular to the tube (20).

As for Claim 2, Re: Claim 1, Belser discloses a fastening bolt assembly wherein the central portion of the first member has an aperture, the aperture and tube being coaxially aligned (26' in Fig. 1).

As for Claim 3, Re: Claim 1, Belser discloses a fastening bolt assembly wherein the cylinder has a washer portion formed on an end of the cylinder (18a in Fig. 3).

As for Claim 4, Re: Claim 2, Belser discloses a fastening bolt assembly wherein the cylinder has a washer portion formed on an end of the cylinder (18a in Fig. 3).

As for Claim 5, Re: Claim 1, Belser discloses a fastening bolt assembly wherein the wing portions, the washer portion and the tube have cross sectional diameters, the cross sectional diameter of the wings being slightly greater than the cross sectional diameter of the tube and the cross sectional diameter of the washer portion being greater than the cross sectional diameter of the wings (the cross sectional relationships between 18, 20, and 26).

As for Claim 6, Re: Claim 5, Belser discloses a fastening bolt assembly wherein the wing portions have an arched profile defining a concave surface having a diameter slightly greater than the diameter of the tube (26' in Fig. 1).

As for Claim 8, Belser discloses a fastening bolt assembly comprising:

an elongated flexible tube having open opposite first and second ends (20a, 23a of 20 in Fig. 4, of which is stated as a tubular expansion insert.),

a pair of wings extending perpendicularly from the first end of the tube (26 in Fig. 1),

a cylindrical member having an internal passage, the internal passage dimensioned to permit the cylinder to slide snugly over the tube (34 in Fig. 3, then utilized in Fig. 2).

the tube (20) being sufficiently flexible to permit the tube to bend (going from the position in Fig. 1 to the that in Fig. 2) such that the wings may be moved between a first position wherein the wings are parallel (26' in Fig. 1) to the tube (20) and a second position (26 in Fig. 1) wherein the wings are perpendicular to the tube (20).

As for Claim 9, Re: Claim 6, Belser discloses a fastening bolt assembly wherein the cylinder has a washer portion formed on an end of the cylinder (18a in Fig. 3).

As for Claim 10, Re: Claim 9, Belser discloses a fastening bolt assembly wherein the wings, the washer portion and the tube have cross sectional diameters, the cross sectional diameter of the wings being slightly greater than the cross sectional diameter of the tube and the cross sectional diameter of the washer portion being greater than the cross sectional diameter of the wings (the cross sectional relationships between 18, 20, and 26).

As for Claim 11, Re: Claim 10, Belser discloses a fastening bolt assembly wherein the wing portions have an arched profile defining a concave surface having a diameter slightly greater than the diameter of the tube (26' in Fig. 1).

***Claim Rejections - 35 USC § 103***

[6] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[7] Claims 7, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belser US-Re. 35,358 in view of Topf US-3,302,508.

Belser teaches of a fastening bolt assembly that possesses wings as shown in 26, in Fig. 1 of Belser.

However, Belser fails to disclose expressly that these wings possess a spike on the wing tip.

Topf teaches of a toggle bolt with a wing (17, 18) as shown in Fig. 5, which possesses both a wing tip and a respective projecting spike on the wing tip (P in Fig. 5 of Topf).

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the wing as taught by Belser, to incorporate a projecting spike on the wing tip taught by Topf, in order to allow a more concrete interface between the wing and the substrate on the other side of the wall, as stated by Topf in line 9, part 3 ("the shape of the prongs -P- assist in preventing the dislodgment of the wing portions 17 and 18"). A design as such that would be desirable in any type of invention with regard to wing structure and function.

As for Claim 15, Belser in view of Topf discloses a fastener toggle comprising:

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a) an elongated flexible tube having open opposite first and second ends (20a, 23a of 20 in Fig. 4, of which is stated as a tubular expansion insert.)

b) a pair of wings extending perpendicularly from the first end of the tube (26 in Fig. 1),

c) a cylindrical member having an internal passage, the internal passage dimensioned to permit the cylinder to slide snugly over the tube (34 in Fig. 3, then utilized in Fig. 2) the cylinder having a washer portion formed on an end of the cylinder (18a in Fig. 3), and

d) wherein the wings, the washer portion and the tube have cross sectional diameters, the cross sectional diameter of the wings being slightly greater than the cross sectional diameter of the tube and the cross sectional diameter of the washer portion being greater than the cross sectional diameter of the wings (the cross sectional relationships between 18, 20, and 26), and

e) wherein the wing portions have an arched profile defining a concave surface having a diameter slightly greater than the diameter of the tube (26' in Fig. 1).

f) wherein the wing portions each have a wing tip, the wing tips each having a projecting spike (P in Fig. 5 of Topf).

#### *Allowable Subject Matter*

[8] Claims 13-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As for Claims 13-14, the prior art, incorporating other corresponding limitations as set forth above, does not teach of the third member to fit snugly in the tube. The closest prior art of Cira, US-4,997,327 only shows of a member fitting over, not within, a fastener.



***Response to Arguments***

[9] Applicant's arguments filed 4/28/2005 regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. Examiner notes the feature of the tube being bent as to allow the wings to be movable between both a first and second position. The claims as written, however, still read on the prior art of Belser, since in the most broad reasonable interpretation possible, the change of direction of the tubular expansion insert, or further, the ability of the tubular expansion to be bent in any sort of the word; such a ability whether or not it occurs still allows the wings to go from a first position to a second position. Examiner suggests adding more structural detail instead of the capacity to do such a movement ("being sufficiently flexible to permit") in order to successfully discern the applicant's claims over the prior art.

[10] Applicant's arguments filed 4/28/2005 regarding rejections under 35 U.S.C. 103 have been fully considered but they are not persuasive. By amending Claim 8 to read, "that the wings extend perpendicularly from the central portion" does not render the claim non-anticipatory toward the prior art of Belser. Belser does indeed show of the wings extending perpendicular (26) from the central portion (24). And further, continuing with the amended claim of 8, please see the above paragraph.

It has been further noted that the applicant stated in the remarks section that claims 13 and 14 were rewritten into the new claim 15. This, however, has not been done, and that is why the terminology, "the third member" in claim 16 lacks antecedent basis into said instant claim and dependent one therefrom.

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***Conclusion***

[11] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

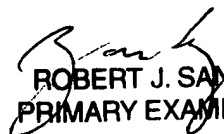
[12] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272- 7082. The examiner can normally be reached on 7:30 am - 6:00 pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,  
David Reese  
Assistant Examiner  
Art Unit 3677

DCR

  
ROBERT J. SANDY  
PRIMARY EXAMINER